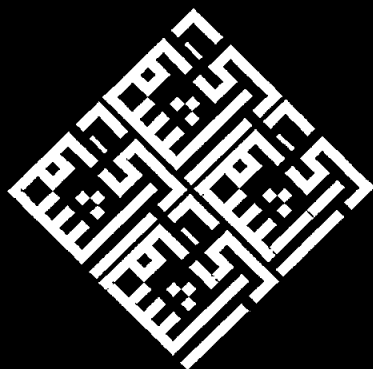


*Al-Shura*

THE QUR'ANIC PRINCIPLE *of*  
CONSULTATION

# AL-SHURA

The Qur'anic Principle *of*  
Consultation



AHMAD AL-RAYSUNI

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## INTRODUCTION

*Al-Shūrā* or consultation is a tool for reconstruction and reform, mentioned in the Qur'an and suggested in the practices of the Prophet Muhammad (ṢAAS)\* and his Companions. At this time, Muslims remain largely unaware of *al-shūrā*'s importance and value, and Islamic scholars are uncertain about when the principle is obligatory and which matters call for consultation. In a modern context *al-shūrā* has been associated on the one hand with democratic participation in a decision-making process, with qualification particular to the Qur'an and the Sunnah; on the other hand critics challenge equating *al-shūrā* with democracy. The Muslim world, largely mired today in political authoritarianism, should adopt consultation as a way of life to protect individual and community interests and as a tool for reconstruction and reform. This book explores how the principle can be introduced and applied in Muslim society and life.

The concept of consultation (*al-shūrā*) remains obscure despite publication in recent decades of hundreds of books and articles on the subject. Numerous additional aspects of *al-shūrā* remain to be addressed. This book focuses on the fundamental concept and explains how the practice can activate and support efforts to benefit the Islamic community worldwide. The book's source-based methodology and legislative principles derive from verses in the Holy Qur'an, events from the life of the Prophet, and examples set by the rightly-guided caliphs. A number of texts from the Holy Qur'an and Prophetic traditions connect consultation to all areas of life: spiritual and material, individual and corporate.

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\* (ṢAAS) – *Ṣallā Allāhu ‘alayhi wa sallam*. 'May the peace and blessings of God be upon him.' Said whenever the name of the Prophet Muhammad is mentioned.

## Chapter One

### The Place of Consultation in Islamic Life

When discussing consultation and the evidence supporting it in Islamic legal texts, scholars and writers tended to focus on two particular Qur'anic verses: 42:38 and 3:159. These verses recount the exchange that Allah (SWT)\* initiated with His angels concerning the creation of Adam and the future of his descendents on earth. Prominent scholar Muhammad al-Tahir ibn Ashur stated that God conducted this exchange to honor and educate the angels, and to inspire emulation. Consultation, he said, was intended to take place in the beginning of creation to provide guidance for human beings.

Another case to include in this category is Abraham's consultation with his son (Ishmael) about a command he received from God. The question of whether Abraham was to sacrifice his son had already been settled through a divine command. Nevertheless, Abraham asked his son, "Consider, then, what would be thy view?" His son replied, "O my father! Do as thou art bidden: thou wilt find me, if God so wills, among those who are patient in adversity" (Surah *Al-Şaffāt* 37:102). When Abraham received a strict divine command to sacrifice his son, he still consulted his son on the matter.

Relevant texts also include numerous Qur'anic verses that establish a foundation for consultation in individual life: between husbands and wives, between parents and children, and even in situations involving marital discord or divorce. Many other purposes and benefits can be achieved through the practice of consultation. If we build upon the view expressed by Ibn Ashur and other commentators he references, consultation is the first social practice for which God established a precedent.

In another example, "mutual consent and counsel" are explicitly mentioned in Qur'anic verses regarding the decision between parents to decide if breastfeeding should be continued, for example: "...But if they desire to wean by mutual consent and consultation, then it is no sin on them..." (Qur'an 2:233). Therefore, management of a child's affairs is a right and responsibility shared by both parents, based on mutual agreement and consultation to best serve the child's interests.

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\* (SWT) ~ *Subhānahu wa Ta'ālā*: May He be praised and may His transcendence be affirmed. Said when referring to God.

This arrangement, which requires careful consideration of a child's affairs, serves to protect the child and is thus an expression of God's mercy and compassion.

Parenting calls for joint consultative management between the parents, or between the parents and the child if he or she has reached the age of discernment. It is also recommended that parents consult with young children in order to accustom them to the process of consultation as a way of life. Hence, consultation is called for when there are questions relating to marriage, family affairs and child-rearing, and situations involving conflict and discord.

*Al-shūrā* is an example to be emulated even regarding questions that were already settled beforehand, or the answers to which are already known. Consultation has specific purposes and benefits, some of which transcend seeking counsel, and include instruction, the bestowal of honor, and setting an example for others to learn from and emulate. If consultation is a commendable and beneficial practice regarding issues already decided, it is even more important and necessary regarding complex issues with diverse and conflicting points of view.

Consultation is a necessity in connection with private affairs, including issues pertaining to the individual, the individual in relation to other individuals, between husbands and wives, and parents and their children, and is clearly vital regarding public affairs and the major issues they raise. The importance of consultation in the public sphere is made evident in the same two Qur'anic verses. The verses speak of those "whose rule [in all matters of common concern] is consultation among themselves" (Surah *Al-Shūrā* 42:38), and God's command to the Messenger of God to "take counsel with them in all matters of public concern." (Surah *Āl 'Imrān* 3:159)

Consultation is mentioned explicitly in Surah 42 along with fundamental characteristics of believing Muslims, who would consult among themselves in all matters of common concern. Scholars have also recognized this reference to the practice of consultation along with other characteristics viewed as essential elements and foundations of the Islamic religion.

Verse 3:159 is addressed to the Messenger of God in his capacity as guide, educator, commander, and leader, and one who calls others to faith in God. These roles required him to be gentle, kind, and

compassionate toward others, tolerant of their failings and forgiving when they sinned; similarly, they required him to seek out others' counsel and show consideration for others' opinions. Moreover, the command given to the Messenger of God to consult his Companions applies to those who, like him, serve as commanders, leaders, and who call others to faith. This verse is viewed as a foundational principle in Islamic government and leadership, and in the relationship between Muslim rulers and those they rule.

The Prophet's Companion Abū Hurayrah observed, "Never have I seen anyone more prone to seeking his Companions' counsel than the Messenger of God."<sup>1</sup> Under Islamic law, the command to "take counsel with them in all matters of public concern" applies to governors, presidents, and others in authority and is mandatory. It was mandatory for the Prophet and is even more mandatory and binding for others.

God's words concerning those "whose rule [in all matters of common concern] is consultation among themselves" tell us that any matter of concern to the whole community should be a subject of mutual consultation, and that no one, including imams and other leaders, has the right to treat it as his or her own exclusive concern or act unilaterally. The basis for the necessity of consultation here is the shared nature of the concern, the shared nature of the right, and the shared nature of the potential benefit or harm that may result from decisions made.

In all cases, the act of seeking out others' counsel is legitimate, praiseworthy, and a means of emulating the Prophet's example. Consultation is never simply a matter of indifference, but a recommended, desirable course of action. This is the clear import of the body of texts and traditions that speak well of consultation and those who engage in it and which draw attention to the desirable outcomes of having sought out others' advice.

Based on examples from the Prophet and confirmed by scholars, consultation (*al-shūrā*) is applicable in the political and mundane spheres of life. The same principles also apply to everyone in the position of ruler or judge. Three of the most prominent areas connected to the mention of consultation are the political, civil, and military spheres of administration. The command to the Prophet to engage in consultation is interpreted as having a broad application until or unless need for a more restricted or specific application is demonstrated.

However, consultation and examination of different options is not necessary when Islamic law contains a clear, definitive ruling described in detail.

Conversely, an area where consultation is essential is in rulings concerning which there is no explicit Qur'anic text and which must therefore be concluded based on analogical deduction (*qiyās*), juristic preference (*istiḥsān*), and reasoning based on seeking public interests (*istiṣlāḥ*). Ibn 'Abd al-Barr related that 'Alī ibn Abī Ṭālib once stated: "I said, 'O Messenger of God, what are we to do in situations concerning which nothing has been revealed in the Qur'an and in which we have no example from you to follow?' The Prophet replied, 'Gather together believers who are knowledgeable (or he said, given to worship). Then consult among yourselves concerning the situation, and do not base your conclusions on the opinion of just one person.'"<sup>2</sup>

Ibn 'Umar related that *al-shūrā* was applied to develop the tradition of *adhān*, or call to prayer.<sup>3</sup> The Prophet consulted his Companions concerning the best way to call believers to prayer. He did not wait for nor did he request clarification or explanation from God. It was, however, unusual for the Prophet to consult his Companions in the derivation of legal rulings; typically he received divine revelations, which were his primary source of authority in such matters. However, he also consulted others concerning such rulings to establish a precedent for those who would come after him.

Furthermore, consultation is an essential component of the judicial area of Muslim life – a judge's rulings affect both individuals and groups, and possibly even states and governments. The prophetic hadiths and other traditions related to consultation over situations lacking explicit text in the Qur'an or the Sunnah apply likewise, and as a matter of course, to the disputes and other cases that the caliphs and other Companions of the Prophet were called to settle. Indeed, the same principles apply to everyone in the position of ruler or judge.

When a dispute came before Abū Bakr al-Ṣiddīq, he would first look into the Qur'an. If he found a basis for a judgment there, he would issue a ruling on this basis. If he found nothing in the Qur'an, he looked to see whether the Prophet had left any precedent relevant to the dispute. If so, he would issue a ruling on this basis.<sup>4</sup> Otherwise, he would go out and ask people about the matter. If even this produced no answers to the question at hand, he would summon the Muslim

leaders and scholars and seek their counsel. If those gathered agreed on a verdict, he would base his ruling on this.

In addition to establishing the principle of consultation and drawing attention to its virtues and importance, Islam enjoins and encourages Muslims to engage in it on the practical level. At the same time, it authorizes the Muslim community to apply, systematize, and adapt the principle for use in various times, places, realms, and circumstances through independent reasoning and good management. Further, the detailed practical means to apply the principle of consultation to Muslims' lives are themselves subject to consultation, as are all organizational and administrative affairs of the state, society, and smaller Muslim communities.

Certain functions and purposes are fulfilled through consultation and for the sake of which consultation was established in Islam. The Ḥanafī jurist Abū Bakr al-Jaṣṣāṣ listed the following benefits of *al-shūrā* in Islam: it provides clear ruling on situations not elucidated in holy texts via independent reason; it highlights the dignified standing of the Prophet's Companions, who were qualified to engage in independent reasoning and whose views were worthy of being adopted and emulated; and it justifies the use of human reasoning to arrive at judgments.<sup>5</sup>

The Mālikī jurist Abū Bakr ibn al-ʿArabī stated that consultation's benefit allows action based on something that is known; that truth is freed from the wrong desires of people; and that one gleans the best results from people's minds and reasoning capacities.<sup>6</sup>

In general, *al-shūrā* offers the following benefits:

- Determining the correct or most correct course of action
- Release from the tyranny of subjectivity and selfish whims
- Preventing high-handedness and tyranny
- Teaching humility
- Giving everyone his or her due
- Promoting an atmosphere of freedom and initiative
- Developing the capacity for thinking and planning
- Increased readiness for action and support
- Promoting goodwill and unity
- Willingness to endure undesirable consequences for a good solution



## Chapter Two

### Basic Issues in Consultative Practice

Islamic law imposes no conditions or restrictions regarding how consultation is to be implemented. Rather, it leaves such matters to people's discretion, choice, and shared deliberations. Comprehensiveness and generality are features that emerge in the traditional Islamic texts describing consultation. As such, consultation is considered to have a wider, more general application, unless the issues at stake are so highly specialized that only those with relevant knowledge and expertise would be capable of offering the needed counsel.

Consultation concerning public affairs involves planning and facilitating the affairs of the state, society, and smaller communities and groups. Consultation also calls for the adoption of myriad organizational and executive procedures: it requires a system, or a detailed set of rules, which has been left silent by Islamic law. Consequently, the way has been left open for creative thinking within the domain of Islamic legislative principles.

Certain organizational basics or universals pertain to the establishment and practice of consultation in the realm of public affairs and their collective management. Such universals, like the details of consultative practice, are not spelled out in Islamic law. However, they may, through a process of induction and careful examination, be derived from the texts of Islamic law and the consultative practices that prevailed in the days of the Prophet and the rightly-guided caliphs.

Narrow conceptualizations of the role, spheres, and functions of consultation in Islamic life, based on a strict interpretation and application of traditional texts, likewise tended to narrow the circle of those concerned with the consultative process, implying that consultation was only suitable between the Prophet and two other Companions. Yet the Messenger of God consulted with untold numbers of his Companions as well as many other groups and individuals. We have abundant accounts in which he said, "Advise me, people."

The two Qur'anic verses that form the basis for consultative practice offer a broad understanding of consultation and its range of applicability among all believers, including women. The principle of broad public consultation applies to all juristic discourse and generalizations

unless there is specific evidence in support of an exception. In its various injunctions and prohibitions, Islamic law addresses both men and women alike, even when the masculine pronoun is used, singular or plural. We know of numerous instances in which the Messenger of God sought out the counsel of female Companions in particular, and in others, of men and women together, in important situations concerning war, or morality, or formulating Islamic practices.

The Qur'an includes two accounts of women's involvement in consultation, both of which are set in a context showing that such involvement meets with divine approval and consent: the first is an account of Queen Sheba seeking others' counsel,<sup>7</sup> and the second of a woman who encouraged her father to hire Moses, a trustworthy person.<sup>8</sup> Those who oppose women's membership in public consultative councils (e.g. parliaments) object in saying that women are not allowed to hold positions exercising sovereignty over others in the public sphere. While this viewpoint is not easily supported, a woman ruling in the political or military sphere may be ineffectual if she is not viewed as effectual by those ruled, simply for being a woman.

Consultation might be limited at times, whether intentionally or unintentionally, to particular people to the exclusion of others. In relation to certain issues, only certain people are qualified to be consulted, in which case there is no basis for the entire community's involvement. Scholars have said that such advisors require integrity, knowledge, and experience, and that advisors should be chosen by election or appointment. The appointment method has the advantage of allowing for the choice of competent, qualified individuals who are not known or appreciated by the public at large. Qur'anic revelation, the Sunnah, and commentaries on them indicate that these two methods can also be combined, with priority given to election.

When a sufficient number of people have been gathered for consultation and the purpose for which consultation was established has been fulfilled, there is no need to continue with the consultative process or to broaden the circle of those engaged. As God said to the Prophet, "Take counsel with them in all matters of public concern; then, when thou hast decided upon a course of action, place thy trust in God" (Surah *Āl 'Imrān* 3:159).

Consultation on highly specialized questions and issues should involve the most highly qualified individuals, who would have the best

knowledge and value to contribute. These include questions relating to science, law, and the judiciary, and industrial, economic, and military planning. Consultation increasingly entails the exchange of knowledge and expertise and discussion of those aspects of an issue that will make possible proper assessment and planning. Consequently, a large and growing number of issues requiring consultation need to be referred solely to those most qualified to deal with them.

In the Muslim context, the consultative council (*majlis al-shūrā*) operates alongside the head of state and his government. Such councils have now become permanent, major institutions in most nations of the world as well as in the majority of Islamic states. They are composed of senior advisors who, according to the Islamic principle of consultation, should possess knowledge, integrity, and experience.

There has been widespread discussion in our day of the question of whether the outcome of the consultative process is binding or merely instructive. How we are to treat the majority opinion of consultative councils, and decisions made by means of consultation that are supported by a majority? Early Muslim scholars viewed consultation for leaders as instructive, while more contemporary scholars and thinkers tend toward the view that a leader or someone in a position of power or authority who seeks counsel of advisors is obliged to abide by what most or all of these advisors have agreed upon (binding consultation).

There is a fundamental inclination in reputable hadiths to adhere to the point of view agreed upon by the majority of those who have been consulted. The same implication can be derived from the tradition where the Messenger of God said to Abū Bakr and ‘Umar, “If the two of you were to agree on a given matter, I would not challenge any counsel you might give me.”<sup>9</sup> Regarding points of view that will become binding legislation for the community as a whole, the worthy (not corrupt) majority view should be adopted and adhered to by consultative councils and bodies with decision-making powers.

The Qur’an contains no explicit ruling on adhering to the majority view in consultative settings. While in some places, the Qur’an does single out the majority, or some majorities, for criticism, there are numerous other places in which it likewise criticizes “the elders” or “notables” of the community, describing them as profoundly misled and deceptive. Prophetic hadiths and other traditions also warn us

against the corruption of Islamic society's ruling elite, namely, its scholars and political leaders, whose corruption can ruin the community just as their honor and integrity can reform and bless it. In the Qur'an, the contrast and comparison are not between small numbers and large ones, but rather between good and bad choices.

The verse cited frequently thus far, namely, Qur'an 42:38, which commends those "whose rule [in all matters of common concern] is consultation among themselves," suggests that in true consultation, the view adopted is communal, and the decisions made are shared in common rather than made by a single individual.

The Queen of Sheba stated that she would never make a weighty decision without the consent of her noble advisors: we find nothing anywhere in the Qur'an that would counter it or nullify its validity. Similarly, what we find in the life and example of the Prophet testifies to the soundness of the Queen's words. The Queen of Sheba is held up in the Qur'an as an example of commendable conduct and good management whose life came to an auspicious end. The queen's words and actions testify to the fact that she was worthy of the authorization granted to her by the consultative council and that she was a woman of experience, understanding, and wisdom.<sup>10</sup>

The Prophet's application of the principle of consultation during his lifetime provides powerful support for the notion that the consultative process ends with the adoption and application of the view held by the majority of those who have been consulted. At the Battle of Badr, the Prophet did not wish to go into battle until he was certain that he had the support of the majority of his Companions, emigrants, and supporters. At the Battle of Uhud, the majority opposed the Prophet's particular defensive strategy. He listened to their case and proceeded with the majority's suggestion. This consultation and its aftermath have aroused a great deal of discussion in our time, as to whether the majority view should be binding or the opposite.

In one reading, the Prophet relinquished his own point of view in favor of that held by the majority of his Companions. Things then proceeded on this basis without veto, abrogation, or objection; in fact, immediately after this, the divine command to "take counsel with them in all matters of public concern" was revealed. A second interpretation indicates that adherence to the majority view when it opposes the imam's is an incorrect and unsound course of action. According to the latter

understanding of events, the defeat the Muslims suffered during this battle came as a lesson to be learned. The second reading disregards the clear, evident meaning of the event and relies instead upon assumptions that negate its apparent significance.

Neither the Companions who took part in this battle, nor the Prophet – who never missed an opportunity to warn, teach, and instruct – ever mentioned this as the reason for their defeat. Indeed, the Qur'an itself deals in detail with this battle and its implications, yet without so much as a single mention of this interpretation.

The Prophet, who frequently employed the practice of consultation, just as often did not consult but instead acted without waiting to hear other people's views, which is what one would expect of someone who is the Messenger of God and receiving divine revelation and instructions. In cases when there was no divine instruction, he did not hesitate to consult others.

The idea of respect for the majority is neither new nor foreign to our Islamic culture and legal system, and is deeply rooted in Islamic society, thought, and legal practice. The principle of giving greater weight to the majority has been supported and applied by Muslim scholars from the early days. Hadith scholars, for example, give greater weight to accounts supported by a larger number of narrators. Similarly, jurists and scholars of the principles of jurisprudence give greater weight to juristic interpretations supported by a larger number of academics and thinkers. If scholars disagree on an issue, the soundest approach is to adopt the view held by the majority. The same principle applies to the views held by the Companions.

Those with knowledge and experience regarding relevant matters are the guides along the path to rightness and truth. They are the guides along the path to perceiving what is required by the Qur'an and the Sunnah and the intents and purposes that underlie them. Rightness and truth can be assumed to rest – if not always, then most of the time – with the majority.

Such evidence is drawn from the Qur'an, the life of the Prophet, and the examples set by the rightly-guided caliphs, as well as from principles laid down by Muslim jurists, scholars who have devoted themselves to the study of the principles of Islamic jurisprudence (*uṣūliyyūn*), and Hadith scholars.

## Chapter Three

### An Overview of Islamic Consultation from its Founding Era Onwards

This chapter looks at initial consultative experiences of the Islamic community to see how consultation was conducted during the lifetimes of the Prophet and the rightly guided caliphs, and in the following era when the place of consultation in the life of the Islamic community suffered a marked setback. The two foundational eras offer lessons of consultation in the present day, as well as the features of these experiences that, though indispensable, also need support and supplementation from other areas of Muslims' lives.

Consultation constituted strength, vitality, and cohesion in the early Islamic community and its fledgling state. Today, Islamic reform movements derive ongoing inspiration from this model of refinement and wisdom to meet the specific challenges of the modern age. Therefore, we should address our present circumstances in the context of Islamic law, which constitutes our authoritative point of reference.

The early Islamic consultative experience offers the following lessons. Consultation may be viewed as a spontaneous, instinctive response on the part of mindful, sensible individuals, legitimized by Islamic law, and instituted as a requirement of sound Islamic practice. Indeed, Islamic law has legitimized numerous intuitive human practices and principles that operate for the common good. The practice of consultation during the early Islamic period was intensive and comprehensive, encompassed both weighty and minor matters, and was laden with seriousness of purpose and moral gravity. Consultation, practiced by the Prophet, was also employed by his Companions and the rightly-guided caliphs.

A major consultation took place among individuals and small groups in preparation for choosing a successor to the Messenger of God, which resulted in a pledge of allegiance to Abū Bakr. The choice of Abū Bakr, a virtuous and spiritually strong leader, was preceded by a great deal of candid, uncensored exchange, and discussion. When Abū Bakr became gravely ill, he commenced consultations concerning who might succeed him in the event of his death, which led to the appointment of ʿUmar as his successor. After ʿUmar had been stabbed and was close to death, people visited him, requesting that he draw up a will and

testament and appoint a successor as Abū Bakr had done. ‘Umar responded, “For this task I know of no one more qualified than the men who enjoyed the Messenger of God’s favor at the time of his death.”<sup>11</sup>

‘Umar appointed six men to undertake the task of finding him a successor, based on a solid foundation since the criterion for his choice was the Messenger of God’s personal stamp of approval on these six men in particular. These men were also leaders and chieftains who enjoyed the favor of the Muslim community.

Another question needing consultation referred to how to dispose of conquered territories – a juristic issue with political, military, and economic dimensions – and was a subject of dispute among the Companions. When ‘Umar, the fighters, and their representatives were unable to reach a solution that everyone could agree upon, he opened the matter for discussion with trusted advisors. ‘Umar was supported in his opinion regarding revoking the practice of division of territory by the majority of the learned, knowledgeable Companions.

This early period and its associated consultative practices were characterized by a marked willingness to seek out others’ counsel, freedom of thought, expression, initiative, candor, fairness, trust, and organizational simplicity and flexibility in keeping with the nature of existing relationships. In an example of the early culture of consultation, Abū Bakr and ‘Umar refused to approve any ruling on new legal issues without first gathering with leaders of the Muslim community and consulting with them about the matter.

The transition from the era of the rightly-guided caliphs – itself an extension of the prophetic era – to the Umayyad era involved a profound shift in the Muslim community’s political situation. Although the Muslim conquests continued apace in the various areas of doctrine, culture, politics, knowledge, and the military, the political shift from a prudent caliphate founded on the wisdom of seeking out others’ counsel to a dictatorial caliphate founded on hereditary succession inflicted a deep wound that would be a long time in healing.

One of the primary victims of this shift, which first struck at the head of the Islamic state, then worked its way through the Islamic community as a whole, was the practice of consultation which, having been established and approved by the Qur’an, had become a way of life for both the Prophet and the rightly-guided caliphs after him.

The practice of consultation still lacked organization or regulation, although the major developments witnessed by the Islamic community and the Islamic state, positive and negative, necessitated the establishment and development of organized plans, institutions, and systems in virtually all other areas of Islamic life. A steady process of evolution in virtually all of its structures, systems, and methods of operation followed the consolidation and expansion of the Islamic state during the era of the rightly-guided caliphs. Developments sometimes occurred through borrowing and replication of the experiences of other nations, and at other times through creative innovation based on Islamic sources and principles. In this way, the Islamic state acquired a number of new or improved organizational structures in the political, financial, administrative, military, educational, judicial, and social spheres.

The Islamic states and societies devised and refined the systems and arrangements required to meet their spiritual and material needs. Yet, consultation had not taken the form of any plan or system. Efforts should have been expended to make the transition from the simple, unplanned, and flexible form of consultation that had characterized the early days of Islam to the detailed, regulated, and highly organized practice that would have best suited both life's steady evolution and the legal functions and arrangements devised and developed by the Muslim community.

Even the process of choosing the Muslim community's political and spiritual leaders had now been divorced entirely from the realm of consultation on both the theoretic and practical levels. In all but certain exceptional cases, consultation had ceased to be practiced in any genuine, systematic way on the political plane. Instead, accession to power took place either based on hereditary succession, or through conquest and usurpation. Governmental affairs were placed in the hands of the ruler alone, whose personal needs, interests, and moods determined all. This has been the most widespread form of political rule.

Perhaps the best, most lasting, and most highly developed application of consultation in Islamic history is found in the Islamic judicial system. The precedent of taking counsel with others regarding judicial matters finds its roots in the practice of the rightly-guided caliphs, particularly 'Umar and 'Uthmān. This ancient form of judicial consultation took a highly systematized form, particularly in Andalusia and Morocco, where it became an integral part of the court system. In this system,



those sought for counsel were appointed as advisors, having been chosen by the judge or ruler from the class of jurists who were qualified to issue legal decisions based on Islamic law.

Given this judicial exception in the realm of consultation, the Islamic judiciary over history has represented the best in Islamic life and Islamic practice in general, since it has continued to rely on a genuinely Islamic source of authority, and has succeeded to a large extent in maintaining its autonomy and evenhandedness. Islamic history's successive states and political regimes have been unable to challenge the hold maintained by Islamic sources of authority on the legislative and cultural spheres.

## Chapter Four

### **Consultation Today: How Do We Promote it and Build Upon it?**

A number of issues relevant to consultation are not adequately understood, and principles of consultation are not being adequately put into practice. A renewed appreciation of the importance of consultation will enable us to move in the direction of establishing a consultative system. There is still a need for further contributions toward establishing a solid framework for consultative practice and for more practical applications of consultation in numerous areas.

To understand consultation-related issues and principles in an integrated, effective manner that will enable us to keep pace with the requirements of modern life, we must look to the authoritative foundations laid during the initial phase of Islam – namely, the days of the Prophet and the rightly-guided caliphate.

These foundations consist of (1) the theoretical and practical guidance to be gleaned from the examples set by the Prophet, his Companions, and the rightly-guided caliphs, (2) the principles and aims of Islamic law, and (3) the consultation-related systems and arrangements that have been implemented by Muslims over the course of their history and across the globe.

Our point of departure for establishing the practice of consultation is the realization that it is rooted in the Islamic religion and divine revelation. As such, it is a gift from God and one of the major foundations

of the Shari'ah, or Islamic law. Consequently, to apply it is to apply the Shari'ah, and to neglect it is to neglect the Shari'ah. Next to revelation, consultation is the primary means of ascertaining which courses of action, both individual and collective, are consistent with wisdom and right guidance. Muslims are guided first through revelation and second through consultation.

Through these two sources of guidance comes certain knowledge and understanding, and with them, the ability to experiment, and to engage fruitfully in independent reasoning and interpretation. When the matter of concern relates to something held in common by members of the society or which involves others' rights, there is a greater need still for consultation. Such consultation should include those whose rights are at stake (or those who are qualified to represent them), particularly when the matter at hand may have consequences that will affect them.

There is no place in Islam for granting others a share in that which belongs to God alone; however, we have no choice but to grant others a share in our own affairs. This is the essence of consultation. Through consultation we participate with others in thinking, planning, and managing. People owe each other to engage in this type of sharing, while those in positions of power and responsibility over others have a special obligation to allow those over whom they exercise such power to participate in the thinking, planning, and managing process.

It is Muslims' right to be consulted concerning their public affairs and their shared interests. Moreover, if people have the right to be allowed to participate in consultation, either directly or through individuals who represent them, concerning how to manage their affairs, then to deprive them of this right is an injustice to them. Moreover, the greater the number of people who are deprived of this right and the longer this deprivation is allowed to continue, its negative effects accumulate. 'Umar spoke severely on this issue, going even so far as to threaten with death those who dared to deprive people of their right to be consulted about the affairs that concern them.

Given the untold loss that the Muslim community has suffered as a result of its failure to practice consultation in a systematic manner, the time has come for us to regain an appreciation of consultation's necessity and value. After all, it is second only to the Qur'an and Sunnah as a source of guidance for people and a reliable means of managing their affairs. Redressing this injustice by restoring consultation

to its proper place in Islamic life is one of the necessary conditions for spiritual and material reform and reawakening.

*Al-shūrā* has never been enshrined in a set of enduring institutions, unlike functions such as government, administration, distribution of zakah, religious endowments, *hisbah*,<sup>12</sup> markets, the judiciary, crime control, policing, security, knowledge, and education. In the earliest days of Islam, the establishment of such an institution would have been neither necessary nor appropriate to the nature of the phase itself, since the consultative process was marked at that time by spontaneity, simplicity, honesty, and trust that even without a defined system or a specialized institution, consultation occurred regularly and effectively. In keeping with the overall trend toward regulation and systematization during the days of the rightly-guided caliphs, a number of organizational initiatives and steps were taken at that time. However, they were not all sustained or developed for future generations.

The most natural course of affairs would have been for such organizational procedures to develop over time into a system for the practice of consultation on the various levels of public life, particularly the political level. The organizational and juristic vacuum surrounding the management of consultation and political differences left the way open for the logic of power to predominate.

Consultation means placing the Islamic law, reason, logic, and shared mutual interests in the position of arbiter among the members of the community. Consultation is composed of dialogue, mutual understanding, and mutual agreement where everyone receives his due. Consultation is also a process of argumentation, persuasion, and allowing oneself to be guided by evidence. There need to be institutions that undergird this practice of consultation and laws that regulate it. If Islam has not laid down a clear-cut system for the practice of consultation, this is consistent with its approach to the organizational aspects of all areas of life that are subject to evolution and change.

The pursuit of knowledge and education is urged upon Muslims in a number of verses of the Qur'an and Prophetic hadiths. Similarly, we find that the Prophet set a practical example for the Muslim community in connection with both consultation and the pursuit of knowledge and education. As we strive now to correct matters by reestablishing consultation in both theory and practice, we have no choice but to recall our foundational principles and build upon them to the greatest extent possible.

The conquests achieved on all levels by Islam and the Muslim nation came with a price: an imbalance and deficit in some qualitative aspects of life in the Islamic state and society and a decline in piety and moral standards. The Companions, and even their successors who learned their thoughts and ways, became a minority within the vast sea of new Muslims on the Arabian Peninsula as well as in the Levant, Iraq, Egypt, Persia, North Africa, and elsewhere, from where 'Umar's assassin emerged, as did 'Uthmān's and 'Alī's. The gains consultation had once made possible were not preserved or systematized to provide a framework.

All developments in people's lives and society, the negative ones in particular, call for the appropriate use of independent, creative reasoning. This thinking process can help us arrive at the rulings that, in keeping with the relevant texts from Islamic law and its guiding principles and aims, are best suited to the situation at hand. We must adopt measures and establish institutions that will preserve Muslims' religion and protect their interests while warding off the dissensions and distortions that threaten to undermine their lives individually and collectively.

Lessons should be gleaned from historical experience, both its virtues and its failings, for the sake of restoring consultation to its place of honor and rebuilding it both conceptually and organizationally. Such rebuilding requires us to redress the primary failing in the area of consultation, namely, the organizational vacuum, by working to systematize and institutionalize consultative practice.

With the need to organize in mind, four legislative principles are amply supported by the texts of Islamic law and applicable to interpretative issues of relevance to new developments in human life. The best example of the first is the position taken by 'Umar when he learned someone was waiting for him to die and wanted to pledge allegiance to the person of his choice, then present the rest of the Muslim community with his *fait accompli*. In the face of this dangerous ambition, 'Umar declared any pledge of allegiance that occurred without prior consultation with the Muslim community to be null and void. In a deft, decisive, and highly prudent move, he shut the door to dissension and civil strife by establishing a consultative council whose work would take public opinion into account in a manner with which no one could find fault.

The second legislative principle of *sadd al-dharā'ī*<sup>ۛ</sup> – the prohibition of evasive legal devices or of anything with potential of leading to the

forbidden or destructive – overlaps with the first principle that new types of offenses necessitate new rulings. The second is narrower and more specific, since it pertains to cases where something legitimate is used as a pretext for something forbidden. In other words, something legitimate and permissible is used for a purpose other than the one for which it was intended. A number of examples and practical applications are relevant to organizing and safeguarding the practice of consultation. One may be seen in the fact that despite their duplicity and attempts to harm him and the Muslim community, the Prophet refrained from putting hypocrites to death. The Prophet knew that some of the hypocrites deserved to be put to death, however, he left them in peace in application of the principle of *sadd al-dharā'ī*.

The third principle relevant to organizing the consultation process is the concept of public interests (*al-maṣāliḥ al-mursalah*), one of the fundamental principles of Islamic law. It is based on the notion that Islamic law is intended to serve people's spiritual and material interests, and that its rulings are intended to bring benefit to people and to protect them from harm, whether immediate or delayed. These human interests are not explicitly identified by any text in the Qur'an or the Sunnah but are generally agreed upon, based on circumstances that arise in human society. Islamic law does not specify all human interests in detail, nor does it spell out all of the rulings required to preserve such interests, which are not only numerous, but also multifaceted and increasing in number by the day.

Therefore, in addition to its detailed rulings, Islamic law has laid down general rulings, universal principles, and all-inclusive aims from which an untold number of rulings related to newly arising situations and circumstances may be derived. Everything that is good, beneficial, right, fair, and charitable is called for by the law of Islam, either as a recommended practice (*mandūb*), or as a requirement (*wājib*) depending on the degree of its importance or necessity.

Islamic legal rulings must fulfill the following conditions: (1) They must be compatible with the aims of Islamic law such that they do not violate any of its principles or conflict with any of its texts; (2) They must be comprehensible and in keeping with logical rationales which, if they are presented to sensible people, will be met with acceptance; and (3) They must be such that, when they are recognized and acted upon, they serve to promote the aims of Islamic law. In sum, the human interests that must be preserved and upon which Islamic legal rulings are based

will be consistent with the detailed contents and overall aims of Islamic law, and will serve to fulfill these aims.

This fundamental principle of Islamic lawmaking has been applied by Muslim jurists, rulers, and judges down the centuries, and has served as the basis for untold numbers of applications in numerous areas of life. One such application is the compilation of the text of the Qur'an during the caliphate of Abū Bakr, followed by the adoption of standard copies of the Qur'anic text for all Muslims in the Islamic territories during the caliphate of 'Uthmān ibn 'Affān.

The fourth principle is borrowing from others for the common good. There is no known juristic principle with this precise wording; however, its content is valid by the standards of Islamic law, and has been put into practice throughout Islamic history. It was applied by the Messenger of God, his Companions, and the rightly-guided caliphs, and has been applied by Muslims over the centuries, particularly in relation to organizational matters and administrative procedures. Muslims have borrowed from others whatever was of use to them and was not in conflict with their religion. The criterion for determining what is worthy of emulation is whether the action in question is consistent with and serves Islam, and whether it benefits the Muslim community and its interests. Such borrowing is an ongoing means of emulating the Prophet, which finds support in the Qur'an and in the example set by the Messenger of God, his Companions, and the caliphs. In democracy, for example, we need the knowledge and practical experience democracy has to offer in the realms of form, organization, and procedure.

Regarding consultation as a tool for reform, the present discussion of consultation reflects an awareness of and responsiveness to its political and social surroundings while at the same time maintaining its own distinct focus and purpose. Consultation embodies a reformist principle rooted deep in Muslims' hearts and minds, with a huge potential for adaptation and modification. How, then, can we translate this reformist principle into a practical mechanism with which the Muslim community can propel itself forward and activate the constructive, progressive potentials that lie within its commitment to the Islamic message? A culture of consultation is needed.

Promotion of a culture of consultation will require more writings, more lectures and seminars, and more consciousness-raising concerning both

the meaning and importance of consultation, and the serious loss and harm that we suffer as a result of its neglect. The instructional discourse needed to spread the culture of consultation will need to be communicated through all channels possible, including the media, education, guidance, preaching and the issuance of Islamic legal decisions. Consultation elevates the individual to a new level in the management of his affairs, enabling him to serve his own and others' interests to the maximum extent; to minimize the harm he does to himself and others, to purify himself, and to develop his intellect.

Groups and organizations involved in such outreach can promote the culture of consultation among Muslims by engaging in consciousness-raising and education on the subject, educating the members of such outreach groups in the process, and incorporating consultation into their group action.

## CONCLUSION

Individuals and groups committed to consultative practice will lead the way to sound Islamic rule, and will form the community's primary buttress and support. Let us remember the Qur'anic verse that describes the Muslim community as those "whose rule [in all matters of common concern] is consultation among themselves"<sup>13</sup> was revealed to the Muslim community when it consisted of just a small group of believers who were calling others to faith, and who as yet had neither a state nor a caliphate. The spirit of consultation needs to permeate the entire culture in which we live; in other words, it needs to become the prevailing way of life. Consultation will only succeed and endure in an atmosphere of freedom: freedom of conscience, freedom of thought, and freedom of speech.

**The Author**

AHMAD AL-RAYSUNI holds a doctorate in Islamic Studies from Muhammad al-Khamis University, Rabat, Morocco. He has worked at the Ministry of Justice, is the editor of *al-Tajdid* newspaper, and a member of the Association of Muslim Scholars in Morocco. Professor al-Raysuni has written a number of books and papers on *al-Maqāṣid* in Arabic, some of which have been translated into other languages. He currently teaches *Uṣūl al-Fiqh* and *Maqāṣid al-Shari'ah* at the College of Arts and Humanities, University of Muhammad al-Khamis, Morocco.



## Notes

- <sup>1</sup> Narrated by al-Tirmidhī in one of his sections on jihad.
- <sup>2</sup> Despite the weakness in the chain of transmission relied on in this tradition, the content of the account is well-attested as being authentic and trustworthy, also, Abū ‘Umar Yūsuf ibn ‘Abd al-Barr, *Jāmi‘ Bayān al-‘Ilm wa Faḍlihi wa miā Yanbaghī fī Riwāyatihī wa Hamlihi* (Beirut: Dār al-Fikr, no date), 2/73.
- <sup>3</sup> *Ṣaḥīḥ al-Bukhārī*, The Book of the Call to Prayer (*kitāb al-adhān*), and al-Tirmidhī, The Sections on Prayer (*abwāb al-ṣalāh*).
- <sup>4</sup> Muhammad Ruwwas Qalaji, *Mawsū‘at Fiqh Abī Bakr al-Ṣiddīq* (Beirut: Dār al-Nafā‘is, 1994), p.155.
- <sup>5</sup> Abū Bakr al-Jaṣṣāṣ, *Aḥkām al-Qur’ān*, 2/41.
- <sup>6</sup> Abū Bakr ibn al-‘Arabī, *‘Ārīḍat al-Aḥwadhī fī Sharḥ Ṣaḥīḥ al-Tirmidhī* (Beirut: Dār al-Fikr li al-Ṭibā‘ah wa al-Nashr wa al-Tawzī‘, no date), 7/206.
- <sup>7</sup> Qur’an 27:29–35.
- <sup>8</sup> Qur’an 28:26.
- <sup>9</sup> Narrated by Imam Aḥmad in *al-Musnad*, 4/227. See also Ibn Ḥajar al-‘Asqalānī, *Fath al-Bārī*, 15/284.
- <sup>10</sup> Adnan al-Nahwi, *Malāmiḥ al-Shūrā fī al-Da‘wah al-Islāmiyyah* (Dammam: Dār al-Iṣlāḥ li al-Ṭab‘ wa al-Nashr, no date), p.36. Also, Qur’an 27:43.
- <sup>11</sup> *Ṣaḥīḥ al-Bukhārī*, The Book of Virtues (*kitāb al-faḍā’il*), the section entitled, “The story of the pledge of allegiance to ‘Uthmān and the agreement to nominate him.”
- <sup>12</sup> *Ḥisbah*: A type of religious authority based on the commanding of what is good and the prohibition of what is evil, which emerged as an independent function in the Abbasid era. The person assuming this function would oversee markets, cleanliness and hygiene, and public morals.
- <sup>13</sup> Qur’an 42:38.





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Muslims remain largely unaware of the importance and value of the Qur'anic principle of *al-Shura* (mutual consultation) and the significant role it can play in the advancement and reform of Muslim society. In this work, the author attempts to introduce and examine key meanings and practices of *al-Shura*, trace its historical evolution, and explore ways in which the principle can be introduced, institutionalized and applied in Muslim societies. There is no doubt that *al-Shura* has been sidelined throughout the Muslim world and the reasons for this are both historically and politically complex. In the opinion of the author, although much has been written on the subject, in reality it has been at best ineffectively applied and at worst heedlessly ignored.

**Professor Mohammad Hashim Kamali**  
**Founding Chairman & CEO, International Institute of**  
**Advanced Islamic Studies, IAIS, Malaysia**

The tide of popular protest against dictatorship that is currently sweeping Arab countries is evidence at once of the failure of participatory and consultative governance and an opportunity in the meantime for them to reclaim their all but lost heritage that is so germane to their own culture and Islam. Al-Raysuni's timely contribution unfolds the place of *al-Shura* in the scripture, juristic and historical precedent as well as the manner of its revival in contemporary Muslim polities. His focus on pragmatic issues and the lines of convergence between *al-Shura* and democracy he has highlighted, make this a particularly interesting reader on the subject.

**Dr. Abdelwahab El-Affendi**  
**Coordinator, Democracy and Islam Programme, Centre for**  
**the Study of Democracy, University of Westminster**

'In the Beginning there was Consultation'. Thus begins Ahmad al-Raysuni's remarkable new book *Al-Shura*, a passionate plea for reviving and incorporating the principle of consultation in all walks of life. His message is that the principle is divine in origin, and its application was coeval with man's very creation. The author thus regards the principle as inherent in the creation process itself, and not merely a doctrinal matter. Further, he sees no objection to enhancing the principle by borrowing from (and further enriching) modern democratic theory and practice. 'Democracy,' he argues, 'needs us as much as we need it.' The book offers a comprehensive and compelling treatment and rethinking of this central Islamic principle.



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